

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

ACS STATE HEALTHCARE, LLC, a)	
Delaware Limited Liability)	
Company,)	
))	
Plaintiff,))	4:08CV3021
))	
v.))	
))	
DAVID HEINEMAN, in his official))	ORDER
capacity as GOVERNOR OF THE))	
STATE OF NEBRASKA; JON BRUNING,))	
in his official capacity as))	
ATTORNEY GENERAL OF THE STATE))	
OF NEBRASKA; CARLOS CASTILLO,))	
in his official capacity as))	
DIRECTOR, DEPARTMENT OF))	
ADMINISTRATIVE SERVICES;))	
CHRISTINE PETERSON, CEO OF THE))	
DEPARTMENT OF HEALTH & HUMAN))	
SERVICES; and STEVE SULEK, in))	
his official capacity as ACTING))	
MATERIAL DIVISION ADMINISTRATOR,))	
))	
Defendants,))	
))	
FOURTHOUGHT GROUP, INC.,))	
))	
Defendant-Intervenor.))	
))	

This matter is before the Court on plaintiff's motion for leave to seek early discovery pursuant to Fed. R. Civ. P. 26(d) (Filing No. 94), the response of the State defendants (Filing No. 103), and the brief in opposition filed by the defendant-intervenor (Filing No. 104). Having reviewed the motion, the parties' briefs and submissions, and the applicable Federal Rules of Civil Procedure, the Court finds plaintiff's motion should be denied.

Rule 26(d) of the Federal Rules of Civil Procedure states that "[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)," unless authorized by stipulation or court order. "Although the rule does not say so, it is implicit that some showing of good cause should be made to justify such an order; the Advisory Committee Notes suggest that relief would be appropriate in cases involving requests for a preliminary injunction or motions challenging personal jurisdiction." 8 Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, *Federal Practice and Procedure* § 2046.1.

The Court has already denied plaintiff's motion for a preliminary injunction and motion for reconsideration, and because the Court's denial is now the subject of an interlocutory appeal before the Eighth Circuit, this Court is currently divested of jurisdiction with respect to the motion for preliminary injunction pending appeal. The Court finds there are no exceptional circumstances justifying deviation from the standard discovery procedures in this matter. Accordingly,

IT IS ORDERED that plaintiff's motion for leave to seek early discovery (Filing No. 94) is denied.

DATED this 7th day of April, 2008.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court